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**IN THE
COURT OF APPEALS OF INDIANA**

LARRY SHAWN MARTIN,

Appellant-Defendant,

VS.

STATE OF INDIANA,

Appellee-Plaintiff.

$$\begin{array}{c}) \\) \\) \\) \\) \\) \\) \\) \end{array}$$

No. 64A03-0606-CR-264

APPEAL FROM THE PORTER SUPERIOR COURT

The Honorable Mary R. Harper, Judge

Cause No. 64D05-0501-FC-142

March 12, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Larry Shawn Martin appeals from his convictions for Burglary,¹ a class C felony, Burglary,² a class B felony, and two counts of Receiving Stolen Property,³ a class D felony. Martin argues that the evidence is insufficient to sustain his convictions. Finding no error, we affirm the judgment of the trial court.

FACTS

Rick Holloway and his family live on twenty-five acres in Hebron and had three Yamaha dirt bikes, worth a total of \$14,000, locked in a shed on the property. In November 2003, Uriah Swelfer learned of the Holloways' dirt bikes and mentioned their existence to Martin. Martin, Swelfer, and Brandon Chaffer later went to the Holloway property to steal the dirt bikes. Chaffer dropped Martin and Swelfer off at the property and waited in his car. Swelfer acted as a lookout while Martin used the bolt-cutters he had brought with him to cut the locks on the shed. Each man pushed one bike out to the road and placed them across the street in a field. Swelfer then returned to the shed to take the remaining bike and moved it to the field with the other two bikes. Swelfer and Martin each rode a bike to a predetermined spot to store them temporarily, after which Chaffer drove Swelfer back to the field to retrieve the third bike.

In April 2004, Martin learned that David Wallace had been arrested. Martin informed Dustin Sandberg of Wallace's arrest, and Martin and Sandberg decided to go to Wallace's house and enter it while Wallace was in jail. On April 14, 2004, Martin and Swelfer entered

¹ Ind. Code § 35-43-2-1.

² Id.

³ I.C. § 35-43-4-2.

Wallace's residence through a sliding glass door while Sandberg acted as a lookout. The men stole a number of items from Wallace's home, eventually returning to Martin's house with the items. Wallace later reported that thirteen guns, a gun case, and a computer monitor were missing from his home, estimating the total value of the missing possessions to be \$15,000.

On July 4, 2004, Swelfer, Sandberg, and Phil Miley took a walk toward property owned by Emmitt Fitzgerald and his family. The group decided to burglarize the Fitzgeralds' shed. Miley kicked in the door of the shed, entered it, and began taking tools out of the building. The men left to obtain a truck from Sandberg's home to carry the items removed from the shed, ultimately unloading the items in an abandoned house near Sandberg's residence. Miley then returned to the Fitzgeralds' property, filled two garbage cans with more tools, and placed the cans outside the shed. The next morning, Swelfer went over to Martin's house and informed him that they had a bunch of "money worth of tools [sic]." Tr. p. 436. Sandberg told Martin that the property was stolen. The group, including Martin, drove to the abandoned house and loaded the stolen tools into Martin's vehicle. Next, Swelfer drove Miley and Sandberg in Martin's vehicle to the area near the Fitzgeralds' shed where Miley had placed the two garbage cans filled with the remaining stolen items. As the men were leaving the area, Fitzgerald spotted them and began running after the car. Swelfer drove back to Martin's house, at which time Martin and Swelfer moved the tools somewhere else to elude detection.

Fitzgerald called the police and reported the burglary, informing the police that he had seen an individual exit a vehicle near the shed and pick up an item in the weeds. A police officer drove around the Fitzgeralds' neighborhood in an attempt to identify a vehicle matching Fitzgerald's description. The officer spotted a similar vehicle at Martin's residence and stopped to speak with Martin for approximately ten to fifteen minutes. Martin told the officer that "I'm trying to keep myself clean," id. at 245, and the officer eventually left. The value of the tools stolen from the Fitzgeralds' shed was between \$8,000 and \$9,000.

On July 8, 2004, Steve Jun lived in a gated community in Porter County with his two teenage sons. At that time, the boys were visiting their mother in Colorado. Jun's youngest son was Swelfer's best friend, and, armed with the knowledge that the boys were out of town, Miley and Swelfer decided to burglarize Jun's home. The two men drove to Jun's neighborhood and entered the residence by unlocking the back door via a door for the family dog to leave and enter the home. Swelfer broke into a safe in the master bedroom, from which Swelfer took an SKS assault rifle and Miley took a .22-caliber rifle. The two men left the residence carrying the two weapons and a "bucket of change" Appellee's Br. p. 5.

Miley and Swelfer then drove to Martin's house because that was the only place where they knew that they "could get rid of the stuff." Tr. p. 418, 550, 552. They showed Martin what they had taken from Jun's house, after which Martin asked what else was inside the residence. Martin told the other two men that they "might as well go back and clean it out." Id. at 419, 552. Martin, Swelfer, and a few others returned to Jun's house, entering the residence, rushing in like "pack rats," and grabbing whatever they could take. Id. at 420. At

Martin's request, Swelfer showed him where the safe was located, and Martin then took other guns from the safe. The group left, returned to Martin's house, and began trading items. Jun later reported that six guns, a Playstation, thirty games, two leather jackets, and basketball shoes were missing from his home.

On January 6, 2005, the State charged Martin with class C felony burglary for the incident involving the Holloways' dirt bikes and class D felony receiving stolen property for the incident involving Jun's residence. On April 11, 2005, the State added additional counts for class B felony burglary for the incident involving Wallace's residence and class D felony receiving stolen property for the incident involving the Fitzgeralds' tools. A jury trial began on November 28, 2005, and although there was no physical evidence linking Martin to the crimes, Swelfer, Miley, Chaffer, and Sandberg all testified against Martin. On December 1, 2005, the jury found Martin guilty as charged. On April 24, 2006, the trial court sentenced Martin to fifteen years for class B felony burglary, eight years for class C felony burglary, and thirty months each for the two counts of class D felony receiving stolen property, with all of the sentences to be served concurrently. Martin now appeals.

DISCUSSION AND DECISION

Martin argues that the evidence is insufficient to support his convictions. Our standard of review for claims of insufficient evidence is well settled. We neither reweigh the evidence nor judge the credibility of witnesses. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). Instead, we will consider only the evidence most favorable to the judgment together with all reasonable inferences that may be drawn therefrom, and will affirm if the evidence

and inferences could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. Id. A judgment based on circumstantial evidence will be sustained if the circumstantial evidence alone supports a reasonable inference of guilt. Buntin v. State, 838 N.E.2d 1187, 1189-90 (Ind. Ct. App. 2005).

Essentially, Martin argues that the testimony of Swelfer, Miley, Chaffer, and Sandberg is inherently unreliable because it is “uncorroborated testimony of thieves and liars. Nothing in their past or present would provide any indicia of reliability.” Appellant’s Br. p. 8. As noted above, however, an appellate court may not judge the credibility of witnesses and we hereby decline Martin’s invitation to do so. Additionally, we observe that although the testimony of an accomplice is subject to a high degree of scrutiny, it nonetheless may be sufficient by itself to sustain a conviction. Stephenson v. State, 742 N.E.2d 463, 496 (Ind. 2001). It is the sole responsibility of the factfinder to consider the accomplice’s trustworthiness, or lack thereof, and include that in the analysis of the witness’s credibility and the weight to be given to his testimony. Id. Martin’s arguments regarding the credibility of the witnesses testifying against him, therefore, must fail.

Martin also briefly mentions the incredible dubiousity rule, pursuant to which we may overturn a conviction if it is based solely on the inherently contradictory testimony of a single witness and there is a complete lack of circumstantial evidence supporting the defendant’s guilt. Weis v. State, 825 N.E.2d 896, 905 (Ind. Ct. App. 2005). Here, however, there were multiple witnesses and substantial circumstantial evidence linking Martin to the crimes. Consequently, the incredible dubiousity rule does not apply.

Turning to the evidence supporting Martin's burglary convictions, we note that to convict a defendant of burglary, the State is required to prove that he broke and entered the building or structure of another person with the intent to commit a felony—here, theft—therein. I.C. § 35-43-2-1. The offense is a class B felony if the structure is a dwelling. I.C. § 35-43-2-1(B)(1). Even the slightest force used to gain entry to the building is sufficient to establish that a breaking occurred. Payne v. State, 777 N.E.2d 63, 66 (Ind. Ct. App. 2002). The defendant's intent may be reasonably inferred from his actions once inside the premises. Murray v. State, 761 N.E.2d 406, 410 (Ind. 2002).

Regarding the Holloway burglary, the State presented the following evidence: (1) Swelfer learned that the Holloways had three dirt bikes inside a shed on their property, tr. p. 394-95; (2) Swelfer mentioned this information to Martin, who indicated that he needed money, id. at 395; (3) Martin directed Chaffer to the Holloways' property, id. at 344, 395; (4) Swelfer acted as a lookout while Martin cut the shed's locks with a bolt-cutter and then entered the shed, id. at 145, 146, 396; and (5) Martin and Swelfer each pushed one bike out to the road, placing them across the street in a field, id. at 351, 397-98. It is readily apparent that this evidence supports a reasonable inference that Martin knew of the bikes' presence on the Holloways' property and subsequently broke and entered the shed with the intent to steal the three vehicles inside. Thus, there is sufficient evidence supporting Martin's conviction on this count.

Regarding the Wallace burglary, the State presented the following evidence: (1) Martin told Sandberg that Wallace had been arrested, id. at 431, 494, 516, 536; (2) the

two men then “decided to go into the house,” id. at 516; (3) on April 14, 2004, Martin and Swelfer entered Wallace’s residence through a sliding glass door while Sandberg acted as lookout, id. at 425, 495, 517; and (4) Martin took a gun case from the residence, id. at 429, 496, 518. This evidence supports a reasonable inference that Martin knew of Wallace’s absence from his home and subsequently broke and entered the residence with the intent to commit theft therein.

As to Martin’s convictions for receiving stolen property, the State is required to prove that he knowingly or intentionally received, retained, or disposed of the property of another person that has been the subject of theft. I.C. § 35-43-4-2. Regarding the Jun burglary, the State presented the following evidence: (1) Miley and Swelfer burglarized Jun’s house, taking two guns and some change, id. at 410-13, 416-17, 480, 550-51, 547, 549; (2) the two men then drove to Martin’s house and showed him what they had taken from Jun’s residence, telling him that they had stolen the property, id. at 418-19, 550; (3) Martin then said that they “might as well go back and clean it out,” id. at 419, 552; (4) Martin, Swelfer, and some other people then returned to Jun’s house, where everyone rushed in like “pack rats” and grabbed whatever they could take, id. at 419-20, 553, 580; (5) Martin took a number of guns from Jun’s safe, and Martin, Miley, and Swelfer took a number of other items including leather jackets, money, and a Playstation, id. at 420, 553; and (6) everyone then returned to Martin’s house, where they unloaded and traded the items stolen from Jun’s house, id. at 421, 554. It is apparent that this evidence is sufficient to support an inference that Martin knowingly and intentionally received Jun’s stolen property.

Regarding the Fitzgerald burglary, the State presented the following evidence: (1) Swelfer, Miley, Sandberg, and others burglarized the Fitzgeralds' shed, stealing tools worth nearly \$9,000 and leaving the tools in an abandoned house, id. at 260; (2) the next morning, Swelfer went to Martin's house to inform him that they had stolen the valuable tools from Fitzgerald, id. at 436, 524; (3) a group of people, including Martin, drove in Martin's vehicle to the abandoned house where the tools had been left and loaded the tools into Martin's vehicle, id. at 436-37; and (4) after Fitzgerald spotted Martin's vehicle driving away from the shed, Martin and Swelfer moved the tools somewhere else to elude detection, id. at 440, 563. This evidence is sufficient to support an inference that Martin knowingly and intentionally received Fitzgerald's stolen property.

The judgment of the trial court is affirmed.

DARDEN, J., and ROBB, J., concur.